
Appeal Decision

Site visit made on 2 June 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 9th June 2020

Appeal Ref: APP/C1625/W/20/3244394

Stamages Lane, Painswick, Gloucester GL6 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Messrs C Nicholls, M Nicholls and R Oldham against the decision of Stroud District Council.
 - The application Ref S.19/0050/OUT, dated 20 December 2018, was refused by notice dated 19 July 2019.
 - The development proposed is an outline application for the erection of 8 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address of the application differs between the application form and the Council's decision notice. The latter describes the application as adjacent to Howbeg, a property also on Stamages Lane. For the avoidance of doubt the land is to the south and east of Howbeg and the intended access is between two properties Howbeg and Atlanta. The plans are sufficiently clear in this regard and I have therefore left the address unchanged from the original form.
3. The application was made for outline planning permission with all matters except access reserved for subsequent approval. I shall therefore deal with the indicative scheme which shows 6 detached dwellings and a pair of semidetached dwellings as being for illustrative purposes only.
4. The appeal site is located within the settlement boundary of Painswick where the principle of residential development is established by the development plan and which the Council confirms is not at issue. It is also within the Area of Outstanding Natural Beauty (AONB) the protection of which is afforded great weight by the National Planning Policy Framework (The Framework). As the Council cannot currently demonstrate a five-year supply for the provision of housing the presumption afforded by paragraph 11d of the Framework also refers to a presumption in favour of development. Nonetheless the Framework¹ also disapplies that provision where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. I have considered the application in this context.

¹ As detailed in footnote 6 to paragraph 11d

Application for Costs

5. An application for costs was made by Messrs C Nicholls, M Nicholls and R Oldham against Stroud District Council. This application is the subject of a separate Decision.

Main Issue

6. The main issue is the effect of the development on surface water drainage and flood risk.

Reasons

7. The site is an open field located central to the village of Painswick which slopes down to from the north west to the south east with a fall in land level of around 14 metres. It is bordered to the north by a public footpath with residential development beyond on higher ground and on the remaining sides by other residential development. A public footpath crosses the site, the illustrative plan indicates that this would be maintained on generally the same alignment.
8. The single issue in dispute is the ability of the site to deliver an acceptable drainage solution. Both the Framework and the Planning Practice Guidance (PPG) indicate that development decisions should ensure that proposals do not increase the risk of flooding. In line with that guidance the developer's site-specific flood risk assessment should demonstrate that the site will be safe, and that people will not be exposed to hazardous flooding from any source. This includes whether it would increase the flood risk elsewhere.
9. Whilst drainage assessments have been completed which show drainage on the site could be adequately addressed there is no conclusive evidence that the development will not increase existing and acknowledged flooding problems on adjacent lower land to the south which is in residential use.
10. In the assessment of flood risk, the applicant confirms that the site is not within an area at risk of flooding, that the site is not within 20 metres of a watercourse and that surface water will be to a main sewer by way of a private drain. However, it is unclear whether the surface water arrangements are satisfactory. The Council state that the estimated overland flow routes provided by the Environment Agency's longer-term flood risk map for England shows that overland flows have a low probability on the site. Furthermore, in the event that water did reach the southern boundary there is a large fence and property obstructing any flows between the site and Woodborough Close (where it appears to be intended to meet the highway drainage). As the assessment relies on unknown or unspecific details the veracity of the approach does not give the level of certainty required that this issue can be satisfactorily addressed. The Council argue that in all lower probability events the flood risk downstream would be increased in an unquantified manner.
11. A drainage technical note was submitted by the appellant however the Councils' Water Resource Engineer argues that it does not follow best practice guidance in terms of proposed storage tanks, their maintenance, outfall, route and condition of the existing surface water system in conjunction with known ground conditions. The appellants in their document could not provide reassurance that the pipe is in a condition to enable it to handle surface water from the development for its lifetime indeed they refer to assumed, estimated and guessed details. As the appellant does not appear to know with any

certainty where the pipe runs or where it is discharging the application lacks an effective strategy.

12. Whilst the second alternative peer report provided by the appellant is welcomed by the Council in that it addresses issues on the site, there remains a lack of clarity as to how the surface water would be addressed on lower land such that I cannot, at this point, be confident that the site could accommodate the number of dwellings proposed. Technical evidence contained in the appellants two assessments may be clear in relation to the drainage proposals within the site but do not satisfy me that flood risk would not be increased elsewhere.
13. The appellant argues that it is illogical to conclude that the onsite provision is acceptable and will improve the situation and, at the same time, conclude that insufficient information has been provided to assess the area off site. The appellants argue that they do not have the ability to survey those areas as this requires surveying on third party land. However, as the water passing through an unsurveyed downstream area would be attenuated to a slower rate than presently exists the appellant draws the conclusion that the proposed drainage solution is acceptable.
14. These are, nonetheless, matters that need to be addressed and where the Framework requires decision makers to ensure that adjacent properties downstream will not be subject to increased risk. Evidence acknowledges known problems and despite the initial lack of objection from Severn Trent Water the local conditions are known to be problematic. The PPG is clear that for a new development comprising a greater number of houses, or one where the flood risk is greater, a more detailed assessment is needed.
15. The appellants argue that as the submitted proposal is unacceptable to Stroud District Council this means that it opens up the option to connect to Severn Trent's foul water sewer. This applies the theory of the drainage hierarchy outlined in the PPG but there is no certainty that Severn Trent Water would agree to a connection of surface water to their foul network in this location especially if other more favourable methods in the drainage hierarchy have not been adequately investigated. I have no evidence that Severn Trent would, in these circumstances, agree to an alternative option.
16. Turning to whether this matter could be satisfactorily addressed through conditions to enable the detail of this to be demonstrated at a reserved matters stage. Given the local conditions experienced coupled with the objections from the Councils drainage officer I do not have a high degree of confidence that this matter could be resolved via condition. The PPG indicates that surface water should be discharged as high up the drainage hierarchy as reasonably practicable with discharge to a combined sewer being the least preferable option. In line with the provisions of the Framework I have no substantive evidence that the proposal would minimise vulnerability or improve resilience in regard to flooding on ground at a lower level. As these matters have not been adequately addressed it is appropriate to take a precautionary approach.
17. The application is in outline with all matters reserved except access however the quantum of development would be established and there remains a propensity for it to exacerbate off site surface water flooding. The PPG is clear in that site-specific details need to show how surface water run off would be managed. I am equally clear that it does not adequately fulfil that requirement.

18. Taking all these factors into account the development conflicts with Policies ES1, ES3 and ES4 of the Stroud District Local Plan (2015) and to the provisions of the Framework. These, amongst other things seek to ensure that development proposals minimise vulnerability to flooding do not increase the risk of flooding on or off the site.

Other matters

19. A legal agreement has been submitted to secure both an affordable housing contribution and affordable housing provision on the site. The content of the agreement is acknowledged though as the appeal is failing for other reasons it is not necessary to comment further on the content.
20. The benefits of boosting the supply of housing has also been highlighted and is not disputed. Even so, the appellants are required to demonstrate the technical credentials of the scheme in order that it can be demonstrated that that number of houses would not exacerbate surface water flooding in the vicinity of the site where flood events are known to occur.
21. A local representation highlights a dispute in land ownership for a small part of the site at the entrance onto Stamages Lane. The appellants' paperwork contains a land registry plan which indicates their ownership whereas alternative information conflicts with the appellants' details. This is a civil matter which, if planning permission were to be granted, would need to be resolved separately. It is not a matter within the jurisdiction of this appeal.
22. The appellants emphasise that as there is only one reason for refusal it must mean that other matters are not at issue. The Councils' report makes clear that as an outline scheme it does not contain enough information to determine the impact on landscape and heritage. The appellants say this was not the view of the officer at the pre-application stage when the appellant argues that no sensitive designations were identified on or near to the site. The site is close to, but not contiguous with, the Painswick Conservation Area and the closest listed building is some 60 metres from the site with vegetation and other properties between. In any event these are matters which would need to be addressed in any detailed design to ensure that the effect on any designated heritage assets are fully considered. It is not a matter that can be resolved at an outline stage where all matters, bar access, are reserved.
23. My attention has been drawn to an appeal decision dating from 1987² on this site which was also for 8 dwellings and which was dismissed. I note that the reasons for refusal differ and the policy context will have moved on significantly since 1987. I am not therefore bound to reach the same outcome. In any event it does not affect my findings in relation to matters of drainage.

Conclusion

24. For the reasons set out and having regard to all other matters raised the appeal is dismissed.

Janet Wilson

INSPECTOR

² T/APP/C1625/A/86/052455/P4